

Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. (This is a GIL).

December 29, 1999

Dear Xxxxx:

This letter is in response to your letter dated December 8, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Please respond in writing regarding the proper procedure to be followed by COMPANY when determining the amount of state and local sales and/or use tax credit available for the situations described below.

COMPANY is an equipment lessor registered to do business in all 50 states. COMPANY leases tangible property on true leases (FMV or non-nominal purchase options), financing leases (purchase obligations) and conditional sales (\$1 purchase options). For both true leases and conditional sales, COMPANY retains title to the equipment until the end of lease when the lessee exercises the purchase option. For financing leases, the lessee retains title from lease inception and COMPANY has a security interest in the equipment. In all cases, the average contract term is three - five years.

During the contract term, a lessee might use the equipment 'out of state' for a period of months or years, then move it into your state for the remainder of the term. When this occurs, does your state grant a credit for sales or use tax paid to another state or local jurisdiction?

Question 1: If your state requires tax be charged on the payment stream, how is the credit calculated when the equipment was previously leased/used in a state that requires tax be paid upfront at lease inception?

Please answer this question for true leases, financing leases, and conditional sales.

Question 2: If your state requires tax be charged upfront at lease inception, how is the credit calculated when the equipment was previously leased/used in a state that (a) requires tax be paid upfront at lease inception or (b) requires tax be charged on the payment stream?

Please answer this question for true leases, financing leases, and conditional sales.

Please mail your response to my attention at:

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Thank you for your prompt attention to this matter. If you have any questions or need additional information, I can be reached at #####.

Please note that the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases. Illinois determines taxation based solely on these two classifications. We do not understand the distinction you make in your letter between a financing lease and a conditional sale.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. Under Illinois law, lessors may not "pass through" their tax obligation on to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees.

Please note that there is an exemption from Use Tax for the use, in this state, of tangible personal property which is acquired outside this state and caused to be brought into this state by a person who has already paid a tax in

another state in respect to this sale, purchase or use of such property to the extent of the amount of such tax properly due and paid in such other state. See 86 Ill. Adm. Code 150.310(a)(3) enclosed. This exemption applies to both conditional sales and leases.

The Use Tax does not apply to the use, in this State, of tangible personal property that is acquired outside this State by a nonresident individual who then brings the property to this State for use here, and who shall have used the property outside this State for at least 3 months before bringing the property to this State. See the enclosed copy of 86 Ill. Adm. Code 150.315. This exemption is not applicable if the 3-month requirement is not met, or if the user is not a nonresident individual.

Further, where a business that is not operated in Illinois, but which does operate in another state, is moved to Illinois or opens up an office, plant or other business facility in Illinois, such business shall not be taxed on its use, in Illinois, of used tangible personal property, other than items of tangible personal property that must be titled and registered with the State of Illinois or whose registration with the United States Government must be filed with the State of Illinois, that the business bought outside Illinois and used outside Illinois in the operation of such business for at least 3 months before moving such used property to Illinois for use here. See 35 ILCS 105/3-70 and 86 Ill. Adm. Code 150.315(b).

For your information, we have also enclosed a copy of 86 Ill. Adm. Code 130.1960 which is the Department's regulation for "Finance Companies and Other Lending Agencies--Installment Contracts--Repossessions."

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.